

## REMARKS

### *Claim Status*

Claims 12-18 are currently pending. Claims 1-11 and 19-31 were withdrawn from current consideration. The examiner has rejected claims 12-18.

### *Claim Rejections – 35 U.S.C. § 112*

Claim 18 was rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter that the applicant regards as the invention. Specifically the examiner feels that there is confusion over what constitutes “essentially free of propylene glycol”. The examiner feels that the phrase “essentially free” is a relative term that renders claim 18 indefinite.

The applicant respectfully disagrees with the examiner. The fact that claims language, including terms of degree, may not be precise, does not automatically render the claim indefinite under 35 U.S.C. 112, second paragraph. *Seattle Box Co., v. Industrial Crating & Packing, Inc.*, 731 F.2d 818, 221 USPQ 568 (Fed. Cir. 1984). Acceptability of the claim language depends on whether one of ordinary skill in the art would understand what is claimed, in light of the specification. When a term of degree is presented in a claim, first a determination is to be made as to whether the specification provides some standard for measuring that degree. If it does not, a determination is made as to whether one of ordinary skill in the art, in view of the prior art and the status of the art, would be nevertheless reasonably appraised of the scope of the invention.

In the instant case, the specification is replete with references to the absence of propylene glycol from the composition. One of ordinary skill in the art, reading the specification would easily understand that minute traces measures of propylene glycol

may be present and still fall within the scope of the claims. Therefore, the phrase “essentially free” does not render claim 18 indefinite.

Further, the records are replete with patents that utilize the phrase “essentially free” in their claims, see for recent examples US Patents 7,091,142 Glass-ceramic and its production and use; 7,087,094 Dry cleaning method using dipropylene glycol n-propyl ether; 7,084,209 Block copolymer hot-melt processable adhesives, methods of their preparation, and articles therefrom; 7,084,199 Thermoplastic olefin nanocomposite; and 7,078,373 Laundry detergent composition. Additionally, the phrase “a silicon dioxide source that is essentially free of alkali metal” was held to be definite because the specification contained guidelines and examples that were considered sufficient to enable a person of ordinary skill in the art to draw a line between unavoidable impurities in starting materials and essential ingredients. *In re Marosi*, 710 F.2d 799, 218 USPQ 289 (CCPA 1983). Thus, it is clear that the phrase “essentially free”, by itself does not render the claim indefinite, there must be a lack of enabling disclosure in the specification. As discussed above, the disclosure is replete with discussion of the lack of inclusion of propylene glycol in the formulations. However, in order to advance the instant application to issuance, the application has requested amendment of the specification, above, in order to specifically clarify that the phrase “essentially free” means containing no more than trace amounts, none of which were added to the formulations. This does not add new material to the specification since this definition is inherent in the specification already and more specifically within claim 18.

Therefore, for the above reasons the applicant respectfully requests that the examiner withdraw the instant rejection.

***Claim Rejections – 35 U.S.C. § 103***

The examiner has rejected claims 12-18 as being obvious over US 5,516,510 in view of US 5,736,574 and Madhaven BN, Final Report on the Safety Assessment of Bisabolol”.

With regards to claims 12-13, the examiner feels that ‘510 teaches a synergistic antimicrobial deodorant composition comprising: an effective amount of one or more glycerin monoalkyl ethers, namely 2-ethylhexylglycerin; and an effective amount of one or more sesquiterpene alcohols, namely farnesol. The applicant has canceled claims 12-13 and 17 above.

With regard to claim 14, the examiner has applied ‘510 above and cites Madhaven as standing for the proposition that  $\alpha$ -bisabolol is a synergistic antimicrobial.

The applicant respectfully disagrees with the examiner. Madhaven, while teaching that  $\alpha$ -bisabolol is used in cosmetics as a skin conditioning agent and an anti-inflammatory compound, specifically teaches that  $\alpha$ -bisabolol has no anti-microbial activity. This is specifically taught in the abstract wherein “ $\alpha$ -Bisabolol was **negative** in bacterial and mammalian genotoxicity tests, ...”. This is supported on page 38, first column, last paragraph, last two sentences. Thus, the actual teaching of Madhaven is that  $\alpha$ -bisabolol is not bacteriotoxic. The examiner’s cites to page 33 column 2, lines 8-16 describe only the structure and synonyms for  $\alpha$ -Bisabolol. The examiner’s cites to page 33 column 2, lines 39-40 describe only  $\alpha$ -Bisabolol is used as a skin conditioning agent, not a bacteriotoxic agent. The examiner’s cites page 35, Table 1 disclosed only that  $\alpha$ -Bisabolol is used in personal products, but not that the  $\alpha$ -bisabolol is used as a bacteriotoxic agent. The examiner’s cites to page 37, column 1, lines 40-42 discloses only that Bisabolol has anti-

inflammatory effects, not bacteriotoxic effects. The examiner's cites to page 38, column 1, last paragraph discloses that  $\alpha$ -Bisabolol has not bacteriotoxic effects (see the last sentence of the paragraph). The examiner cites to page 39, column 1, lines 8-11 discloses only that  $\alpha$ -Bisabolol is a skin conditioning agent, lines 46-50 discloses that it is a penetration enhancer and is synergistic with propylene glycol (which is explicitly absent from the present invention and not used as a bacteriotoxic agent); column 2, lines 1-3 discloses only the use of  $\alpha$ -Bisabolol for increased absorption of skin ingredients and not an increase in effectiveness of bacteriotoxic agents. Thus, Madhaven actually teaches away from the instant invention in that it specifically teaches that  $\alpha$ -Bisabolol is not bacteriotoxic. '510 only teaches that Farnesol is bacteriotoxic, but does not suggest that  $\alpha$ -Bisabolol is bacteriotoxic. Therefore, a combination of Madhaven with '510 would teach one of ordinary skill in the art that a combination of  $\alpha$ -Bisabolol with a glyceryl monoalkyl ether **would not** have a synergistic effect against gram-negative bacteria. Since and there is no teaching or suggestion in either '510, '547 or Madhaven that  $\alpha$ -bisabolol is effective against gram-negative bacteria let alone synergistically effective, when combined with a glyceryl monoalkyl ether, against gram-negative bacteria.

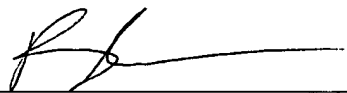
With respect to claim 18, the examiner cites to '574 as disclosing a synergistic antimicrobial deodorant composition comprising one or more glyceryl monoalkyl ethers and any other additional ingredient typically used in cosmetic and dermatological compositions, wherein said synergistic antimicrobial composing exhibits efficacious bactericidal properties against non only gram-negative bacteria but also gram-positive bacterial and discouraging the incorporation of propylene glycol.

The applicant respectfully disagrees with the examiner. '574 actually teaches a deodorant composition comprising a synergistic combination of glyceryl monoalkyl ethers and antimicrobial hydrolipids. See the abstract and claim 1 for specific enunciation of the combination. At best, '574 discloses the their synergistic combination may include other ingredients. Column 3, lines 53-61. However, there is no teaching or suggestion in '574 there should be a synergistic effect between the glyceryl monoalkyl ethers and the particular sesquiterpene  $\alpha$ -bisabolol. Further, there is no teaching or suggestion of the same when combining '574 with '510 or Madhaven, either singly or in combination.

Accordingly, since the prior art cited by the examiner doe not teach or suggest, either individually or in combination, the synergistic efficacy of a combination of glyceryl monoalkyl ether and  $\alpha$ -bisabolol against gram-negative bacteria, the applicant respectfully requests that the examiner withdraw the instant rejection and allow the claims as now amended.

Respectfully submitted,

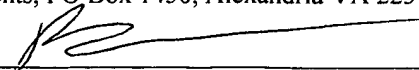
Date: August 23, 2006

  
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On August 23, 2006

By: \_\_\_\_\_